

EXHIBIT D

DEPOSITION OF OFFICER MIGUEL MASSO

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

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PATRICIA HIVES, individually)	
and as co-successor in interest)	
to Decedent Jacorey Calhoun,)	
)	
Plaintiff,)	
)	
vs.)	Case: 4:15-CV-02490-DMR
)	
COUNTY OF ALAMEDA, a municipal)	
corporation; DEREK THOMS,)	
individually and in his official)	
capacity as deputy for the)	
COUNTY OF ALAMEDA, et al.,)	
)	
Defendants.)	
_____)	
)	
M.C., by and through his)	
guardian ad litem ARION)	
GUILLORY,)	
)	
Plaintiff,)	
)	
vs.)	
)	
COUNTY OF ALAMEDA, a municipal)	
corporation; DEREK THOMS,)	
individually and in his official)	
capacity as deputy for the)	
COUNTY OF ALAMEDA, et al.,)	
)	
Defendants.)	CERTIFIED COPY
_____)	

DEPOSITION OF OFFICER OFFICER MIGUEL MASSO

MONDAY, MAY 23, 2016

REPORTED BY: LISA L. JONES, CSR #12982

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1 A Yes, sir.

2 Q And what's the first thing you recall about
3 hearing this call for service -- I'll ask you this:

4 Where were you when you first heard this call
5 for service?

6 A I was probably somewhere in East Oakland,
7 patrolling, when the call came over the air about a --
8 that there was an Adam unit that was doing a car stop --
9 or attempting to do a car stop on a vehicle that was
10 wanted in our DB, which is the Daily Bulletin, for --
11 there was a BOL, be on the lookout, for a vehicle that
12 was involved in a home invasion, a 212.5.

13 Q Okay. Car stop involved in a DB, or daily
14 bulletin?

15 A Yes, sir.

16 Q That's what you recall hearing over the air?

17 A Yes, sir.

18 Q What is the daily bulletin?

19 A A daily bulletin is a printout of incidents
20 that have happened just recently, which include wanted
21 suspects' names, date of births. Sometimes we get
22 pictures. We get stolen vehicles or any major
23 incidents; shootings, what happened the day prior or
24 over the weekend, we'd be on the lookout for witnesses
25 or suspects that might be involved, and we constantly go

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1 out there, and we just look for --

2 (Reporter interrupted.)

3 THE WITNESS: -- look for these individuals,
4 whether they're victims, witnesses or suspects, and we
5 turn them over to our detective bureau.

6 MR. LACY: Q Okay. So it's a printout of
7 things that happened the day prior --

8 A Yes, sir.

9 Q -- or within the week, sometime recently; is
10 that right?

11 A Yes, sir.

12 Q Would it be -- how do you get this information
13 when you come on shift at 1400; how do you get the daily
14 bulletin information?

15 A There's a printout on the desk when we come
16 into our lineup, and it's for everybody to go ahead and
17 grab it. Our lieutenant usually puts it out, be on the
18 lookout for a certain person or a certain vehicle, and I
19 know that 212 was meant -- the vehicle -- very distinct
20 vehicle was put out a few days prior, and everybody was
21 actively looking for this vehicle -- I can't say
22 everybody, but at least I know I was, and I know a few
23 of the officers that were out there looking for this
24 vehicle.

25 Q Okay. So you had a recollection of this report

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1 of a home invasion or -- what was it, a 212, you said?

2 A Yes, it was a 212.5, which is the home invasion
3 and supposedly, there were multiple suspects, and they
4 were armed with firearms at the time.

5 Q Okay. Did you have any other understanding of
6 whether or not this vehicle would contain weapons if you
7 encountered it?

8 A I'm not exactly sure if it would be included,
9 but I know that the subjects were named, and there were
10 firearms that were involved in these home invasions. So
11 there was a likelihood that the subject in the vehicle,
12 the person who was in the vehicle at the time, might be
13 armed.

14 Q Okay. When you hear this -- this call for
15 service go out about this vehicle, what do you do?

16 A I start heading in that direction.

17 Q How so? I mean, in Code-3?

18 A No, not Code-3, but just trying to get there
19 before anything else happens. I recall hearing several
20 other officers come over the air and just say that, hey,
21 this is possibly -- this might be the vehicle involved
22 in the home invasion. So not just myself, but there
23 were already units that were already in route to that
24 location.

25 Q Okay. So from what you recall, there was still

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1 speculation about whether or not it was even the vehicle
2 involved in the DB; is that right?

3 A That's correct.

4 Q But potentially it could be; is that right?

5 A That's correct.

6 Q And which means that potentially it could
7 contain some folks who had been involved in a home
8 invasion; is that right?

9 A That's correct.

10 Q All right. What's the next thing you recall
11 hearing about this car?

12 A I remember that the officers initiated the car
13 stop. The vehicle did pull over. I remember there was
14 a pause on the radio. I'm not exactly sure for how
15 long, then remember hearing the officer put over the air
16 that they were in pursuit of the vehicle, that the
17 vehicle had taken off, and they were involved in a car
18 chase. I remember requesting information to pursue. I
19 remember hearing -- I'm not sure which sergeant it was,
20 but he gave authorization for the pursuit, and I started
21 heading that direction to see if I could assist.

22 Q Okay. Are you -- what are you trained do in
23 that circumstance? Are you trained to head off certain
24 escape routes and things like that?

25 A No. It's pretty much going to be called by the

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1 pursuing officer. We're trained here at OPD at the time
2 that we don't block intersections or roads for obvious
3 other reasons, for causing traffic accidents or having
4 somebody else get injured or hurt. We just start
5 heading that direction as fast as possible to try to see
6 if we can assist.

7 Q Okay. Do you recall obeying traffic signs and
8 lights as you went in this direction?

9 A I was pretty far away, so I'm positive that I
10 obeyed my traffic laws and signs all the way down there.

11 Q Okay. As you were approaching the area where
12 this -- the car pursuit is going on, do you hear
13 anything else about the pursuit?

14 A I don't recall, sir. There was a lot of
15 traffic transmission being put over the air. I know
16 this incident happened on San Leandro and 50th Avenue,
17 and I was working District 5, so I was -- I was at least
18 40, 50 blocks away from where the incident took place,
19 so it took me awhile to start heading that direction to
20 see if I could assist.

21 Q Okay. Do you recall the pursuit coming to an
22 end before you arrived on the scene?

23 A Yes, sir.

24 Q Where do you recall that pursuit ending?

25 A I believe they lost the vehicle somewhere in

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1 the 90th Avenue around that area in San Leandro, they
2 lost the vehicle. I remember the sergeant coming over
3 the air and canceling the pursuit, and then they picked
4 the vehicle up again somewhere around 98th and San
5 Leandro, but they believed they lost the vehicle. And
6 then another unit -- I believe Sergeant Encina canceled
7 the pursuit again. I believe he came over there and he
8 canceled the pursuit, and another officer located the
9 vehicle in the area of the 10500 block of Edes.

10 Q Okay. So let me get this straight. While the
11 car pursuit is going on, there is a report out over the
12 radio, as far as you recall, that the vehicle was lost
13 somewhere around 90th; is that right?

14 A Yes, sir.

15 Q And you hear Sergeant Encina come over the
16 radio and say, "cancel the pursuit"; is that right?

17 A That's correct.

18 Q But then somebody else sees the vehicle?

19 A Yes, sir.

20 Q And then they lose it again around 98th?

21 A Yes, sir.

22 Q And then Sergeant Encinas again says, "hey,
23 cancel the pursuit"?

24 A Yes, sir.

25 Q And then somebody else finds the vehicle parked

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1 somewhere?

2 A Yes, sir.

3 Q What happens after you hear that the vehicle is
4 parked somewhere?

5 A I believe the officer puts out that he observed
6 the subject, the driver, coming out of the vehicle and
7 running into the yards in the 10500 block of Edes
8 Avenue.

9 Q Are you familiar with this location?

10 A Yes, I am.

11 MR. LACY: Okay. I'm going to show you the
12 point of reference something that you have, Mr. Murphy,
13 and I don't know that you have, what has previously been
14 marked as Exhibit 11.

15 Do you need a copy?

16 MR. PEREDA: No.

17 (WHEREUPON, Exhibit 11 was referenced.)

18 MR. LACY: Q Do you recognize the area
19 that's depicted in this diagram, officer?

20 A Yes, I do, sir.

21 Q Okay. Is this the area of 105th and Edes that
22 you spoke about a little bit earlier?

23 A Yes, sir.

24 Q Okay. When you arrived on the scene, can you
25 tell me where you parked your patrol car?

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1 A It was a female. I want to say it was Nash,
2 but -- Officer Nash, but I don't remember. I know there
3 was a female across, because I talked -- we talked on
4 the radio to make sure we had -- she could see me, and I
5 could see her.

6 Q Okay.

7 A So we had eyes, and we were using our
8 flashlights to make sure we were looking at one another.

9 Q Okay. Was your flashlight on your gun or do
10 you have a separate flashlight?

11 A Separate flashlight.

12 Q Okay. Did you have your weapon drawn at this
13 point?

14 A No, I did not.

15 Q You were watching?

16 A Yes, sir.

17 Q Did you hold that position until a sergeant or
18 a superior officer arrived on scene?

19 A Yes, sir.

20 Q How long after you took up that watch position
21 on top of the electrical box did a sergeant arrive?

22 A I'd say I started instructing officers to take
23 up the perimeter. Once the perimeter was established,
24 maybe five, ten minutes, probably -- I believe, Sergeant
25 Encinas was the first sergeant to arrive on scene.

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1 Shortly after that Sergeant Lee arrived and then
2 Lieutenant Holmgren arrived. And once the sergeant got
3 on scene, I relinquished the perimeter to him. And then
4 once Lieutenant Holmgren got on scene, he took over.

5 Q Okay. So how many officers would you say you
6 gave instructions to when you said you were telling
7 officers to take up a perimeter, do you know how many
8 officers?

9 A I just come over the air, and I started
10 directing the officers where to go; pretty much 105th --
11 (Reporter interrupted.)

12 THE WITNESS: -- 105th and Acalanes, 105th and
13 Edes, mid block on both Acalanes and where were at, and
14 then whatever street is east from us, I had perimeter
15 units. Once we established that, I was still able to
16 hear the noise coming from the yard. I ended up
17 canceling those units that were just east of us and
18 bringing them over to our perimeter to lock down the
19 perimeter even further.

20 MR. LACY: Q Okay. So you actually heard
21 noises coming from the yard yourself?

22 A Yes, sir.

23 Q Okay. What type of noises did you hear?

24 A I just kept on hearing footsteps and movement,
25 things being moved, rattled, exactly what it was, I

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1 Q Did you let him know that you gave him commands
2 to come out?

3 A Yes, sir.

4 Q But -- that nobody responded; is that right?

5 A Yes, sir.

6 Q And you let Sergeant Encinas know that after
7 that -- since that time, you haven't really heard
8 anything back there?

9 A Yes, sir.

10 Q Had anybody seen any person or suspect flee
11 from that area?

12 A No, sir.

13 Q Okay. Did Sergeant Encinas communicate
14 anything to you about what he wanted to do after you
15 gave him that information?

16 A I do not remember what he told me. I know I
17 stepped down from the overwatch. Somebody else took my
18 position from the overwatch, then we started designating
19 who was going to be part of the DAT team.

20 Q Who was designated as being part of the DAT
21 team?

22 A Besides me being involved, I was part of it. I
23 don't remember who else was involved.

24 Q Okay. The DAT is the designated arrest team,
25 right?

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1 A Yes, sir.

2 Q And Sergeant Encinas was making the decisions
3 about who was going to be in the DAT team?

4 A I'm not exactly sure, but once ALCO arrived, it
5 was a combination of both, on who was going to be part
6 of it. I know -- we had their officers for -- and their
7 patrol officers protecting their canine officers -- we
8 were going to have some of our guys being part of the
9 search team, because we all had cameras on, so we wanted
10 to make sure we covered the whole incident. So it was a
11 combination of both. I believe we had three OPD,
12 including myself, and I want to say we had three ALCO
13 with their canine. I would say it was maybe five or six
14 officers all together.

15 Q Okay. Before we go on, you mentioned your
16 camera, okay -- or at least one of the reasons that OPD
17 officers were going with the Alameda County Sheriff's
18 Department is because you had your cameras on; is that
19 right?

20 A Yes, sir.

21 Q And you wanted to make sure you recorded
22 everything; is that right?

23 A Yes, sir.

24 Q Did you turn on your camera?

25 A My camera was on before I even got there.

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1 Q But the area wasn't naturally illuminated by
2 sunlight; is that right?

3 A No, sir.

4 Q Did you have to use your flashlight to look in
5 certain areas?

6 A Yes, sir.

7 Q All right. The first -- what's the first place
8 that you guys decide to search?

9 A We started at -- DAT was formed. We decided we
10 wanted to go to this building complex here, which were a
11 bunch of apartments. We decided to start the search
12 there. So we decided that we're not going to go cut the
13 lock on the -- on the north fence, because we wanted to
14 cover the surrounding area first before we actually went
15 into that yard first.

16 So there was a lot of open areas. We wanted to
17 cover that first before we actually made entry, and we
18 didn't want to cut the lock, because we knew that the
19 main residence was in front, so we wanted to try to get
20 access through their residence before we actually
21 damaged or cut the lock on the property.

22 Q Okay. So you still had a good idea that there
23 was someone in this yard; is that right?

24 A That is correct.

25 Q You said there was a lot of open space that you

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1 wanted to secure before you made an attempt to go into
2 this particular yard; is that right?

3 A That is correct.

4 Q Why is that?

5 A We just wanted to cover all of our bases first.
6 We wanted to cover the --

7 (Reporter interrupted.)

8 THE WITNESS: -- the ETD open area. We wanted
9 to just make sure that -- we wanted to take care of
10 the -- do the dangerous place last, just for officer
11 safety reasons. So if we take care of the open areas,
12 we can just get that out of the way and concentrate
13 everything else on where we believe the suspect is going
14 to be at.

15 MR. LACY: Q Okay. So the open areas,
16 meaning, are these places that a suspect could flee
17 to?

18 A Yes, sir.

19 Q Or areas that would be easily searched?

20 A Easily searched.

21 Q Okay. So you go to this -- looks like an
22 apartment complex or townhouse complex, west of 10536
23 Acalanes; is that right?

24 A Yes, sir.

25 Q You search that area first; is that right?

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1 A Yes, sir.

2 Q What is your function in that search team?
3 What are you doing?

4 A I was number four in the stack, I believe. The
5 ALCO deputy and canine officers were in front of me. We
6 started off with searching the fence area, and there was
7 some dead space. In front of the apartment complex
8 there was some trees, and there was a high fence that we
9 couldn't see on the other side, so we had to go through
10 a gate and actually work our way east through the
11 apartment complex, in front of the apartment complex and
12 clear that area first.

13 Q Okay. And you did that?

14 A Yes, we did.

15 Q There was no one over there?

16 A We encountered a female. I believe she was a
17 female Hispanic, that came out of one of the apartments.
18 She told us that she observed a male, male black that
19 matched the description that was provided for us, and
20 she said he approached her -- not exactly remember what
21 exactly she said -- but she said that she believed that
22 he might have gone into her house. So we weren't sure
23 if he actually forced entry or was the door open, but
24 she gave us consent, permission to enter her residence
25 and clear her residence and make sure there was nobody

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1 anything like that?

2 A No, sir.

3 Q Were there any signs of any type of struggle or
4 anything like that?

5 A No, sir.

6 Q Were there any weapons, like guns laying
7 around?

8 A No, sir.

9 Q All right. So what's the next thing you do
10 after you search that house?

11 A We continue east -- sorry. We continued west.
12 Exited the residence and continued west up into the
13 corner of 105th and Edes Avenue, and we just continued
14 clearing that area up until we got to Acalanes and
15 continued to search in the backyards and the residences
16 that were there.

17 MR. LACY: Okay. I'm going to show you another
18 diagram here that we have marked as 28.

19 Do you guys need a copy of this?

20 MR. PEREDA: No, thank you.

21 MR. MURPHY: I do, if you have an extra copy.

22 MR. LACY: I do.

23 (WHEREUPON, Exhibit 28 was referenced.)

24 MR. LACY: Q All right. Do you recognize
25 this Google map overlay, Officer Masso?

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1 A Yes, I do, sir.

2 Q Is this at least part of the area that's
3 depicted in this diagram that we've talked -- or that
4 we've told you has been designated Exhibit 11?

5 A Yes, sir.

6 Q Does it show at least part of this apartment
7 complex that you searched; is that right?

8 A It shows the west, the east -- sorry -- east
9 portion of it, but not the whole entire complex, sir.

10 Q Okay. You said you made your way further west,
11 then you came back around on Acalanes; is that right?

12 A Yes, sir.

13 Q Did you search this front area of the apartment
14 complex?

15 A Yes, sir.

16 Q And that was with the canine?

17 A Yes, sir.

18 Q You see this area just -- it looks like west of
19 the apartment complex here, it's kind of an L shape
20 almost; do you see that?

21 A Yes, sir.

22 Q Did you search that area?

23 A I'm pretty sure we did. Yes, sir.

24 Q Do you know how you searched it? Was that part
25 of the apartment complex or is that another building all

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1 see into the backyard of 10536 from the backyard of
2 10538; is that right?

3 A We couldn't see and we couldn't -- it was too
4 high for us to climb.

5 Q Okay. And it was too high to climb and you
6 couldn't see through it?

7 A Yes, sir.

8 Q Okay. And then you said someone stood back at
9 an overwatch position while you went onto your next
10 location; is that right?

11 A Yes, sir.

12 Q So you leave the backyard of 10538 Acalanes; is
13 that right?

14 A Yes, sir.

15 Q Which you were in, and you go to the next
16 house; is that right?

17 A Yes, sir.

18 Q And that's depicted here -- it doesn't have an
19 address on it, but it's the house -- it would be
20 directly east of 10538 Acalanes; is that right?

21 A Yes, sir.

22 Q Do you recall making contact with the residents
23 there?

24 A Yes, sir.

25 Q Did you make contact with them specifically

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1 yourself?

2 A I don't think it was me. I believe it was
3 another officer that made contact with them and informed
4 them what we had, and we asked permission to go in their
5 backyard.

6 Q They gave you permission?

7 A I'm pretty sure they did, yes, sir.

8 Q Okay. In other words, you went in their
9 backyard, didn't you?

10 A Yes, we did.

11 Q Okay. Once you're in their backyard, did it
12 appear how it appears here in this photograph, where the
13 backward is fairly open?

14 A Yes, sir.

15 Q How was the lighting at this time? Was it
16 still pretty dark?

17 A It was -- it was becoming light. I'm not sure
18 what time. It took us awhile to get to the backyard,
19 but the sun was starting to come out, so there was some
20 lighting out there.

21 Q Okay. You said it took you awhile to get to
22 this backyard; what do you mean?

23 A Well, during a search, we do a slow --

24 (Reporter interrupted.)

25 THE WITNESS: -- slow, methodical search, just

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1 Q Okay. There was no one that you found in this
2 backyard, though, was there?

3 A No, sir.

4 Q The canine at some point alerts the canine
5 handler that there's someone in a neighboring backyard;
6 is that right?

7 A Yes, sir.

8 Q Where were you when you noticed the canine
9 handler get this alert?

10 A I was number two in the stack. We made it to
11 the backyard. He released the dog. He searched this
12 first area back here. He came back to the chicken wire.
13 He came back to the canine handler. Once he cleared
14 that area, we walked up, and then that's when he
15 released the canine again -- or I'm not sure if there
16 was actually an open spot on the east portion, but the
17 chicken wire came across, and there was like something
18 else right here. And either the canine went around it
19 or it went over it and made it over to this area, and he
20 actually stopped at this fence along the line -- the
21 east portion of -- the east fence of 10538, that's where
22 his canine stopped.

23 Q Okay. I want you to mark with "K-9," where the
24 canine, where you believe the canine stopped. Okay.

25 For the record, Officer Masso has marked "K-9"

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1 in the northwest corner of this backyard, directly next
2 to 10536 Acalanes.

3 What did the canine do after -- I mean, when it
4 signaled?

5 A The canine was barking. He was scratching at
6 the fence. He was very excited, started moving around,
7 walking around and pacing in that area. I remember --
8 to me, from dealing with dogs in the past, doing these
9 searches, I actually knew -- that the dog was probably
10 hinting that there was somebody in the yard. I remember
11 hearing a canine officer, don't know exactly what he
12 told his dog, but he was able to get his dog to stop and
13 sit down, and the dog actually did sit down, and he was
14 laying there.

15 By the time we made it over -- I was number two
16 by that time in the stack. Canine went over first.
17 Briefly, I remember the canine officer turning back and
18 letting me know, hey, my dog got a hit -- or got a -- I
19 believe it was somebody there. He went over the chicken
20 wire first. I went over. By that time, don't know what
21 happened with the dog, but the dog somehow made it over
22 the fence.

23 Q Okay. Let's stop right there.

24 So you said there was chicken wire somewhere in
25 this backyard here?

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1 A Yes, sir.

2 Q Could you indicate with a line, just a straight
3 line, of where you believe this chicken wire was. Okay.

4 So you were on the southern part of this
5 chicken wire, initially; is that right?

6 A Yes, sir.

7 Q And the dog was in the northern part of this
8 chicken wire; is that right?

9 A Yes, sir.

10 Q And you said that you were second in the stack
11 in going over the chicken wire; is that right?

12 A Yes, sir.

13 Q Did you make it over the chicken wire before
14 the dog hopped over the fence?

15 A I believe I made it over the wire before the
16 dog jumped over the fence.

17 Q How soon after you made it over the chicken
18 wire did the dog hop over the fence?

19 A I believe it was as I was going over the
20 chicken wire, that's when the dog went over. The canine
21 handler was over the fence already, and then I started
22 coming over, that's when I observed the dog jump over
23 the fence.

24 Q Okay. If you can draw an H of where the
25 handler was at when you recall the dog hopping the

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1 fence. All right. And your initials are M and M,
2 right?

3 A Yes, sir.

4 Q Not unlike the rapper. Could you draw an M and
5 M, and then circle that where you were when you saw the
6 dog go over the fence. Okay.

7 So you were just coming over the fence and the
8 canine hops over the fence?

9 A Yes, sir.

10 Q Did you hear the handler give any instruction
11 to the canine to hop over the fence?

12 A No, sir.

13 Q Did it appear as if -- or I'll ask you this:
14 Were you surprised that the canine hopped over
15 the fence?

16 A Yes, I was.

17 Q Did it appear that the handler was surprised
18 that the canine hopped over the fence?

19 A I'm going to say, yes.

20 Q What gives you that impression?

21 A Because I remember he was telling his canine --
22 don't know the exact words he was telling him, but I
23 remember him giving the command to stay. As he came
24 over, I saw the canine handler rush over to the fence.
25 Immediately, I rushed over with him, which I believe

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1 that probably delayed the rest of our stack. We
2 actually -- okay. I believe at this point, before the
3 canine even went over the fence, I believe we talked
4 about what we were going to do when we get to the fence.
5 Our plan was to -- because the fence was so high, we
6 weren't going to go over the fence because of the
7 position of disadvantage. So we actually discussed
8 about how we're going to take the fence down, and we
9 talked about, we're going to go through it, instead of
10 going over it, which is more of a safety thing.

11 Q Okay.

12 A While we decided and we had our stack in order,
13 as we were going over the fence, that's when the canine
14 went over. So we -- I saw him rush over. I rushed
15 behind him. Once we go to the fence, I heard a
16 struggle, or -- there was no screaming. There was no
17 yelling. There was -- there was a struggle in the yard.
18 Don't know -- couldn't see from where we were at. The
19 fence was too high. I remember seeing the canine
20 officer raise up with both hands to look over the fence.
21 He comes back down and tells me his dog is in trouble.

22 At that time, without -- he immediately goes
23 over the fence. I go up behind him. I'm not sure if --
24 where -- the distance between the rest of our stack was
25 compared to where we were at. As soon as he said that,

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1 A I don't remember, sir.

2 Q But it was a tall fence?

3 A It was a tall fence.

4 Q Do you know what color the electrical box was?

5 A I don't remember.

6 Q Okay. But you said you could see all the way
7 to Acalanes from standing on that electrical box; is
8 that right?

9 A Yes, sir.

10 Q Do you know where the -- you said, your
11 partner, and I think you said it might have been Nash,
12 was standing on Acalanes, that you could see?

13 A Yes, sir.

14 Q Could you point to it on Exhibit 28?

15 A I'm going to say over here.

16 Q Okay.

17 A Because I remember talking on the radio, and I
18 remember asking if anybody could see my light, or -- you
19 know, I don't remember exactly what I said, but I know I
20 saw an officer on this side, and I was able to
21 communicate with that officer by -- verbally, over the
22 radio and by flashlight, to make sure we can actually
23 see each and make sure nobody has actually broken --
24 have gone further east than where we were at, so we're
25 showing off the block by not going further east.

DEPOSITION OF OFFICER MIGUEL MASSO

1 chicken wire?

2 A Yes, sir.

3 Q After the canine is over, you said the handler
4 looks over the fence or something like that; is that
5 right?

6 A He climbs up the fence a little bit and looks
7 over.

8 Q You said he then indicated to you that his dog
9 was in trouble?

10 A Yes, sir.

11 Q How did he say that? I mean, did he say it
12 verbally to you?

13 A He said it verbally. I don't remember the
14 exact words he used, but I know he told me to the effect
15 that his dog was in trouble -- or I want to say that he
16 did tell me, my dog is in trouble.

17 Q Okay. Did it appear to be a circumstance of
18 emergency for him?

19 A Yes, it did, sir.

20 Q What gave you that impression? Were his eyes
21 bulged? Was he speaking in a loud voice?

22 A Just the tone of his voice when he said it. It
23 reminded me of me just saying that one of my partners
24 was in trouble. You know, canine handlers and their
25 dog, they grow a bond. It appears to me that, to him,

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1 Q Okay. You said you could see him behind the
2 trailer or --

3 A He was coming -- there was lot of debris --
4 there's some shelves and stuff back here, and that's
5 where he came out of. He started running towards us or
6 what I could see, towards me, and the deputy was on the
7 trailer -- on the hood of the vehicle when he came out.

8 Q Okay. Where were you at?

9 A I was on the fence, still on the fence when I
10 observed him coming at us -- running towards us.

11 Q Okay. And you said he was running towards you?

12 A Yes, sir.

13 Q Could you see where the dog was?

14 A I'm not sure if the dog was in front of him or
15 behind him, but -- I don't remember.

16 Q Do you recall if the dog was engaging him at
17 all?

18 A No, the dog was not on him.

19 Q Okay. Could you see his hands?

20 A No, I could not.

21 Q Do you know where his hands were?

22 A Both of his hands were lowered down towards his
23 waistband.

24 Q Okay. And he was running?

25 A Yes, sir.

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1 Q Okay. Dogs making noise -- you know, the
2 officers are making noise?

3 A Yes, sir.

4 Q Okay. You're not trying to hide your presence
5 from the person you're looking for?

6 A No, sir.

7 Q At the time the arrest team was formed and you
8 were deciding on your search strategy, were you given
9 any information about whether you should expect that
10 this suspect may be armed?

11 A Yes, sir.

12 Q What information do you remember being given?

13 A Prior -- once they put out the car chase -- or
14 sorry. Prior to the initial car stop, the information
15 was broadcast over the air that the suspect that was
16 involved in the 212.5, the home invasion were conducting
17 the invasion with -- they were armed without possible
18 firearms.

19 Q And did you have an understanding of when that
20 home invasion had occurred?

21 A I believe it was more than one home invasion
22 describing the vehicle and the subjects and those
23 occasions there were weapons involved.

24 Q Okay. Were you given any information at the
25 scene before the search started about whether a weapon

DEPOSITION OF OFFICER MIGUEL MASSO

1 was located in the car that the subject had parked and
2 left behind?

3 A No, sir.

4 Q Was the team then told, you should expect this
5 person may well be armed?

6 A Yes, sir.

7 Q Okay. And I think if my notes are correct, you
8 testified initially that when you got up onto the
9 utility box on Edes Avenue, you could not see down into
10 the yard where you thought this subject might be?

11 A That is correct.

12 Q And what prevented you from seeing into that
13 yard while you were standing up on the utility box?

14 A The big fence. It was a really tall fence,
15 besides the fence that I was adjacent to -- or right
16 next to electrical box, which is probably -- say
17 six feet that I had to look over in order for me to look
18 in the yard. They gave me -- the advantage for an
19 overwatch. The fence that I believe the subject was on
20 was a lot taller than that fence, plus it was covered in
21 trees and debris, which made it very difficult for us to
22 look inside the yard.

23 Q Okay. Now, we talked about the yard, and you
24 marked it on Exhibit 29, the yard that had the chicken
25 wire fence in it, was it that yard that the utility box

DEPOSITION OF OFFICER MIGUEL MASSO

1 was next to?

2 A Yes, sir.

3 Q Okay. So you weren't standing adjacent to the
4 yard where the shooting ultimately occurred; you were
5 standing one yard over?

6 A Yes, sir.

7 Q One yard to the east?

8 A Yes, sir.

9 Q And you testified that at the time you were
10 going up the fence and straddling it, you heard shots
11 and saw muzzle flash -- or you heard a shot and saw
12 muzzle flash?

13 A Yes, sir.

14 Q Okay. You believed you were being shot at?

15 A Yes, sir.

16 Q Were you in fear for your own life?

17 A Yes, I was.

18 Q And is that when you drew your weapon?

19 A Yes, sir.

20 Q And were you prepared to use your weapon to
21 defend yourself?

22 A Yes, I was.

23 Q At any time, did you hear the canine handler
24 giving any commands that you believed were directed
25 toward the subject you were searching for?

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1 A Yes, I did.

2 Q Okay. And when did you hear that?

3 A As I was coming over the fence, I began hearing
4 verbal commands.

5 Q Do you know what he was saying?

6 A No, I do not.

7 Q Was he making them loudly?

8 A They were loud, yes.

9 Q Do you know how many times he gave commands?

10 A I don't remember, sir.

11 Q Did he give the commands before you heard any
12 pops or shots?

13 A I don't remember, sir.

14 MR. MURPHY: Okay. That's all I have.

15 Mr. Lacy cleaned up all my other notes.

16 MR. LACY: Officer Masso, thank you for your
17 time.

18 THE WITNESS: Thank you, sir.

19 MR. LACY: A pleasure to meet you. And, again,
20 thank you for your service.

21 (WHEREUPON, at 1:19 p.m., the deposition of
22 MIGUEL MASSO was concluded, this date.)

23 --oOo--

24

25

MIGUEL MASSO